

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JUNIUS SILVA,

Plaintiff,

-against-

**REPORT AND
RECOMMENDATION**
CV 05-325 (ERK) (ARL)

COUNTY OF SUFFOLK, et al.

Defendants.

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LINDSAY, Magistrate Judge:

On January 20, 2005, Plaintiff commenced this action by filing a summons and complaint. Thereafter, Plaintiff took no further action in pursuit of this matter. Thus, on December 30, 2005, and March 20, 2006, the undersigned entered orders directing Plaintiff to show cause as to why the undersigned should not recommend that this matter be dismissed for failure to prosecute.

Because the Plaintiff failed to respond to either order, the undersigned now recommends that this case be dismissed, given the Plaintiff's repeated failures to comply with this Court's orders and his failure to prosecute. *See*, Fed. R. Civ. P. 41(b). Rule 41(b) gives the district court power to dismiss a complaint "for failure to comply with a court order, treating noncompliance as a failure to prosecute." *Simmons v. Abruzzo*, 49 F.3d 83, 87 (2d Cir. 1995). It is well settled that a dismissal under Rule 41(b) "operates as an adjudication on the merits and that such a dismissal is with prejudice." *Hoffman v. Wisner Classic Mfg. Co.*, 927 F. Supp. 67, 71 (E.D.N.Y. 1996) (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 630-32 (1962)).

A copy of the Report and Recommendation is being sent by the Court to counsel for all parties. Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a courtesy copy to the undersigned within 10 days of service. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. §636 (b) (1); Fed. R. Civ. P. 72; *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
May 18, 2006

SO ORDERED:

_____/s/_____
ARLENE ROSARIO LINDSAY
United States Magistrate Judge